UNITED STATES PATENT AND TRADEMARK OFFICE

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EXAMINER
RASHID, DAVID

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NOTIFICATION DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>23 June 2008</u>.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1,2,5,9,11-16 and 18-20</u> is/are pending in the application.
   4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) <u>1,2,5,9,11-16 and 18-20</u> is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a)☐ All   b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.
4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 C.F.R. 1.114

[1] A request for continued examination under 37 C.F.R. § 1.114, including the fee set forth

in 37 C.F.R. § 1.17(e), was filed in this application after final rejection. Since this application is

eligible for continued examination under 37 C.F.R. § 1.114, and the fee set forth in 37 C.F.R. §

1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn

pursuant to 37 C.F.R. § 1.114. Applicant's submission filed on June 23, 2008 has been entered.

Amendments

[2] This office action is responsive to the Amendment and Reply Under 37 C.F.R. § 1.116

received on May 23, 2008. Claims 1-2, 5, 9, 11-16, and 18-20 remain pending; claims 19-20

new.

Claim Rejections - 35 U.S.C. § 101

[3] In response to the Amendments to the Claims received on May 23, 2008, the previous §

101 rejections are withdrawn.

Claim Rejections - 35 U.S.C. § 103

[4] The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

[5] **Claims 1-2, 13-15,** and **18-20** are rejected under 35 U.S.C. § 103(a) as being

unpatentable over U.S. Pub. No. 2003/0002715 (filed Dec. 7, 2000, *hereinafter* "Kowald") in

view of U.S. Pub. No. 2003/0126121 (filed Jun. 21, 2002, *hereinafteer* "Khan et al.").

Regarding **claim 1**, while *Kowald* discloses a photographic image

("photographer...capturing the image or image sequence." at ¶0037) selecting apparatus (fig. 5)

comprising:

a classifying means (fig. 5, items 522, 524; fig. 6, item 601) for classifying a plurality of

photographic images into similar photographic image groups ("[t]he visual language

classification system 522 outputs classification data 524, configured as further metadata, which

is associated with each image..." at ¶0036; "features including landscape features...or other

particular shapes..." at ¶0037; "time code and date data" at ¶0051), comprising photographic

images which are similar to each other (photographic images in a video stream are "similar" to

each other), the similarities being determined by analyzing ("content analysis to analyse the

images residing in the store 510", at ¶0037) digital data ("digital video" at ¶0035) representing

the photographic images;

a qualified photographic image extracting means (fig. 5, item 514; fig. 6, item 616) for

extracting ("editing system 514 which extracts the appropriate images or sequence of images

from the store 510" at ¶0047; ¶0048 for an example of "images that have been previously

classified as a long shot.") photographic images, that satisfy predetermined selection conditions

(¶0050; "sharpness, colour, content quality" at ¶0053) as qualified photographic images (those

images classified under a certain characteristic in memory 526 will be identified for editing in

video editing system 514), from each of the similar photographic image groups (Each

frame/image is tagged with metadata including all identified characteristics of that particular

frame. All frames/images with a particular metadata tag (*e.g.*, exposure amount) is a group, and

it is possible for each frame/image to belong to multiple groups. Hence, each of the similar

photographic image groups will be extracted in the editing system 514 when all images are

searched for a particular metadata characteristic.); and

a differentiating and processing means (fig. 5, items 518, 519, 516; fig. 6, item 616) for

differentiating the qualified photographic images from the other photographic images (those

images classified under a certain characteristic in memory 526 will be identified for editing in

video editing system 514 is "differentiating" those images classified under a certain

characteristic from the rest) and administering processes thereon (those images classified under a

certain characteristic are then open for editing in system 514, and thus "administering processes

thereon"),

wherein:

the qualified photographic image extracting means (fig. 5, item 514; fig. 6, item 616) is

equipped with a selection condition setting means (fig. 5, item 514; "[t]he system 514 then

interrogates the store 526 to form a pick-list of images..." at ¶0048; ¶0048),

the selection condition setting means sets the selection conditions for each similar

photographic image group (fig. 5, item 514 is responsible for selecting the set for each similar

photographic image group; ¶0048); and

a recording means (fig. 5, items 504, 510, 526, and 519 are all recording means for

storing the image data) for recording the differentiated photographic images (those images

classified under a certain characteristic in memory 526 will be identified for editing in video

editing system 514 is "differentiating" those images classified under a certain characteristic from

the rest), *Kowald* does not teach the selection condition setting means so as to be stricter for

photographic image groups having a greater number of photographic images included therein.

Khan et al. discloses a method for remotely searching biometric data (including face recognition) that includes a selection condition setting means (fig. 10) that sets the selection conditions for each similar photographic image group ("photographs of a group of individuals of interest" at ¶0023), so as to be stricter for similar image photographic image groups having a greater number of photographic images included therein ("[a]lternatively, the search engine may be programmed by the user to select a predetermined number of top matches and send those to the workstation (1026" at ¶0052; if a predetermined number of top matches is selected (*e.g.,* 10), then the more images in a given group would have to have stricter rules because only 10 must be selected (*i.e.,* selecting 10 images from a group of 100 images would not incorporate as many strict rules needed for selecting 10 images from a group of 1000 images).

It would have been obvious to one of ordinary skill in the art at the time the invention was made for the selection condition setting means of *Kowald* to include so as to be stricter for photographic image groups having a greater number of photographic images included therein as taught by *Khan et al.* "to provide a system and method for searching biometric data over a network", *Khan et al.,* ¶0009 and "to provide a system and method that uses the Internet as a communication infrastructure to enable time and cost-effective information sharing of biometric information between organizations", *Khan et al.,* ¶0010.

Regarding **claim 2**, *Kowald* discloses wherein:

the predetermined selection conditions include image quality levels ("image quality analysis" in ¶0053]).

Regarding **claim 13**, *Kowald* discloses wherein:

the differentiating and processing means (fig. 5, items 518, 519, 516; fig. 6, item 616) performs processes wherein the qualified photographic images and the other photographic

images are differentiated (¶[0047]), then recorded in the recording means (fig. 5, item 519), the qualified photographic images being stored separately from the other photographic images (memory is comprised of addresses, specific addresses containing information for specific images; qualified photographic images are "stored separately" with respect to their address locations from the other photographic images, even if all images are stored in the same memory).

Regarding **claim 14**, *Kowald* discloses wherein:

the differentiating and processing means (fig. 5, items 518, 519, 516; fig. 6, item 616) performs processes wherein only the qualified photographic images are recorded (from ¶[0036], the video editing system 514 grabs only the frames/images from database 510 that pertain to metadata characteristics stored in database 526 to be further processed in items 516, 518, 519) in a recording medium (fig. 5, item 519; ¶[0036]).

Regarding **claim 15**, *Kowald* discloses wherein:

the differentiating and processing means (fig. 5, items 518, 519, 516; fig. 6, item 616) is a display means (fig. 5, item 518); and

only the qualified photographic images are displayed (from ¶[0036], the video editing system 514 grabs only the frames/images from database 510 that pertain to metadata characteristics stored in database 526 to be further processed in items 516, 518, 519) thereby.

Regarding **claim 18**, claim 1 recites identical features as in the computer readable medium having recorded therein a program that causes a computer to execute selection of photographic images (fig. 6; ¶[0062) of claim 18. Thus, references/arguments equivalent to those presented above for claim 1 are equally applicable to claim 18.

Regarding **claim 19**, *Kowald* discloses the photographic image selecting apparatus of claim 1, wherein the qualified photographic image extracting means (fig. 5, item 514; fig. 6, item

616) extracts ("editing system 514 which extracts the appropriate images or sequence of images from the store 510" at ¶0047; ¶0048 for an example of "images that have been previously classified as a long shot") photographic images that satisfy predetermined selection conditions (¶0050; "sharpness, colour, content quality" at ¶0053) , said predetermined selection conditions being based on image quality (¶0050; "sharpness, colour, content quality" at ¶0053).

Regarding **claim 20**, *Kowald* discloses the photographic image selecting apparatus of claim 1, wherein the predetermined selection conditions (¶0050; "sharpness, colour, content quality" at ¶0053) are related to at least one of degree of exposure, degree of defocus, degree of blur ("sharpness, colour, content quality" at ¶0053, *emphasis added*), degree of defocus of a facial portion, and whether an eye of a subject being photographed is open.

[6]   **Claims 5** and **9** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Kowald Khan et al.* and U.S. Pub. No. 2002/0118883 (filed Feb. 24, 2001, *hereinafter* "Bhatt").

Regarding **claim 5**, while *Kowald* in view of *Khan et al.* discloses a photographic image selecting apparatus as defined in claim 3, *Kowald* in view of *Khan et al.* does not teach wherein the selection condition setting means sets the selection conditions so that at least one qualified photographic image is extracted from each of the similar photographic image groups.

Bhatt discloses a classifier-based enhancement of digital image (fig. 5) wherein a selection condition setting means sets the selection conditions (fig. 5, items 40, 45, 50, 65, 55) so that at least one qualified photographic image (¶0032; fig. 5, item 20, "photo quality" in ¶0008) is extracted ("Each image after enhancement goes through a file size check in item 45." in ¶0032; ¶0032) from each of the similar photographic image groups ("Image Enhance GROUP 1" through "Image Enhance GROUP N" in fig. 5).

It would have been obvious to one of ordinary skill in the art at the time the invention

was made for the selection condition setting means of *Kowald* in view of *Khan et al.* to include

setting the selection conditions so that at least one qualified photographic image is extracted

from each of the similar photographic image groups as taught by *Bhatt* "…to provide a novel

automated method with minimal manual interactions to enhance the images from diverse

sources.", *Bhatt*, ¶0009.

Regarding **claim 9**, while *Kowald* in view of *Khan et al.* discloses a photographic image

selecting apparatus as defined in claim 3, *Kowald* in view of *Khan et al.* does not disclose

wherein the selection condition setting means sets the selection conditions according to a

specified number of qualified photographic images to be extracted from each of the similar

photographic image groups.

Bhatt discloses a classifier-based enhancement of digital image (fig. 5) wherein a

selection condition setting means (fig. 5, items 40, 45, 50, 65, 55) sets the selection conditions

(fig. 5, item 65; "parameters" in ¶0032; ¶0032) according to a specified number (the specified

number is all images in each Image Enhance GROUP, whatever that number may be) of

qualified photographic images (¶0032; fig. 5, item 20, "photo quality" in ¶0008) to be extracted

from each of the similar photographic image groups ("Image Enhance GROUP 1" through

"Image Enhance GROUP N" in fig. 5).

It would have been obvious to one of ordinary skill in the art at the time the invention

was made for the selection condition setting means of *Kowald* in view of *Khan et al.* to include

setting the selection conditions according to a specified number of qualified photographic images

to be extracted from each of the similar photographic image groups as taught by *Bhatt* "…to

provide a novel automated method with minimal manual interactions to enhance the images from diverse sources.", *Bhatt*, ¶0009.

[7]   **Claim 11** is rejected under 35 U.S.C. 103(a) as being unpatentable over *Kowald* in view of *Khan et al.* and *Kowald*.

Regarding **claim 11**, while *Kowald* in view of *Khan et al.* discloses a photographic image selecting apparatus as defined in claim 1, wherein *Kowald* discloses:

the differentiating and processing means (fig. 5, items 518, 519, 516; fig. 6, item 616) performs processes wherein only the qualified photographic images (from ¶0036], the video editing system 514 grabs only the frames/images from database 510 that pertain to metadata characteristics stored in database 526 to be further processed in items 516, 518, 519) are processed (fig. 5, items 518, 519), *Kowald* in view of *Khan et al.* does not teach wherein that processing is printing.

Kowald teaches a printer (fig. 6, item 615) connected to the photographic image selecting apparatus (fig. 6, item 601).

It would have been obvious to one of ordinary skill in the art at the time the invention was made for the differentiating and processing means of *Kowald* in view of *Khan et al.* to include a printer as taught by *Kowald* for "…the automated classification of images and/or shots into various emotive catgories thereby permitting editing to achieve a desired emotive effect.", *Kowald*, ¶0016.

[8]   **Claim 12** is rejected under 35 U.S.C. 103(a) as being unpatentable over *Kowald* in view of *Khan et al.*, *Kowald*, and U.S. Patent No. 6,079,885 (issued Jun. 27, 2000, *hereinafter* "Sano").

Regarding **claim 12**, while *Kowald* in view of *Khan et al.* discloses a photographic image selecting apparatus as defined in claim 1, wherein *Kowald* discloses:

the differentiating and processing means performs process wherein the qualified photographic images and the other photographic images are processed (If two metadata characteristics are extracted from video editing system 514, groups A and B are formed-slides with characteristics of one metadata (group A) and slides with characteristics of the other metadata (group B). All slides with both metadata characteristics are processed (groups A and B), and if group A is the "qualified photographic images" with respect to one metadata characteristic, then group B would be the "other photographic images".), *Kowald* does not teach wherein the process is (i) <u>printing</u> (ii) in <u>different</u> sizes.

Kowald teaches a printer (fig. 6, item 615) connected to the photographic image selecting apparatus (fig. 6, item 601).

It would have been obvious to one of ordinary skill in the art at the time the invention was made for the differentiating and processing means of *Kowald* in view of *Khan et al.* to include a printer for printing as taught by *Kowald* for "…the automated classification of images and/or shots into various emotive categories thereby permitting editing to achieve a desired emotive effect.", *Kowald*, ¶0016.

Sano discloses a printer with variable image processing corresponding to image size (fig. 1) wherein photographic images (3:28 - 29) are printed in different sizes ("image 1" and "image 2" in fig. 6).

It would have been obvious to one of ordinary skill in the art at the time the invention was made for the differentiating and processing means and printer of *Kowald* in view of *Khan et al.* and *Kowald* to include printing the qualified photographic images and the other photographic

images of *Kowald* in view of *Khan et al.* and *Kowald* in different sizes as taught by *Sano* "…to

produce high quality prints by changing the type of image processing and the amount of

correction corresponding to the size of each printed image.", *Sano*, 2:3-5.

[9]   **Claim 16** is rejected under 35 U.S.C. 103(a) as being unpatentable over *Kowald* in view

of *Khan et al.* and U.S. Patent No. 5,848,217 (issued Dec. 8, 1998, *hereinafter* "Tsukagoshi et

al.").

Regarding **claim 16**, while *Kowald* in view of *Khan et al.* discloses a photographic image

selecting apparatus as defined in claim 1, wherein *Kowald* discloses:

the differentiating and processing means (fig. 5, items 518, 519, 516; fig. 6, item 616) is a

slideshow display means (fig. 5, item 518 wherein a display constitutes a "slideshow"); and

the qualified photographic images and the other photographic images (If two metadata

characteristics are extracted from video editing system 514, groups A and B are formed-slides

with characteristics of one metadata (group A) and slides with characteristics of the other

metadata (group B). All slides with both metadata characteristics are displayed (groups A and

B), and if group A is the "qualified photographic images" with respect to one metadata

characteristic, then group B would be the "other photographic images".) are displayed as slides

for display durations, *Kowald* in view of *Khan et al.* does not teach displaying <u>different</u>

durations.

Tsukagoshi et al. discloses subtitle encoding/decoding method and apparatus (fig. 1)

wherein slides ("plurality of video frames" in 6:23-39) are displayed in different durations (6:23-

39 wherein subtitles are longer in time duration that the video frame).

It would have been obvious to one of ordinary skill in the art at the time the invention

was made for slideshow display means of *Kowald* in view of *Khan et al.* to display the slides at

different display durations as taught by *Tsukagoshi et al.* "for encoding subtitles to be played

back exclusively during the trick playback mode, i.e., during fast, slow or reverse playback

modes.", *Tsukagoshi et al.*, 2:61-64.

Response to Arguments

[10]   <u>Applicant Arguments/Remarks Made in an Amendment</u> filed May 23, 2008 with respect

to claim 1 has been respectfully and fully considered, but not found persuasive.

Summary of Remarks regarding claim 1

Applicants argue that the Examiner's interpretation of *Kowald* to disclose the qualified

image extracting means is improper. *Kowald* fails to teach or suggest extracting photographic

images that satisfy predetermined selection conditions. Further, *Kowald* fails to teach or suggest

extracting photographic images from each of the similar photographic image groups. (Applicant

Resp. at 8-9, May 23, 2008.)

As neither of the cited references, either alone or in combination teach or suggest all of

the claim elements, assuming these references are combinable, which Applicants do not admit,

Applicants respectfully submit that claim 1 is not obvious over the references as cited. It is

respectfully requested that the outstanding rejection be withdrawn. (Resp. at 9.)

Examiner's Response regarding claim 1

The following is a quotation of 37 C.F.R. § 1.111 which forms the basis for proper replies

by applicant:

> A general allegation that the claims define a patentable invention without specifically pointing out how
> the language of the claims patentably distinguishes them from the references does not comply with the
> requirements of this section.

37 C.F.R. § 1.111(b).

Applicant's arguments fail to comply with 37 C.F.R. § 1.111(b) because the reply amounts to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. The Examiner would request not just where the language of the claim patentably distinguishes from the prior art of record, but how the language of the claim patentably distinguishes from the prior art of record. Stating where in the claim that the prior art of record doesn't read does not appear to be sufficient for a proper reply for the Examiner to distinguish Applicant's invention from the prior art for the record.

The Examiner suggests that the Applicant amend claim 1 with respect to the "qualified photographic image extracting means" by introducing more restrictive and definite language to better differentiate the element from the prior art references (*e.g.*, what are the predetermined selection conditions?, or what constitutes similar photographic image groups?, *etc*; in addition to what is analyzed to determine similarities, what processes are being administered, *etc.*).

Conclusion

[11]   Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID P. RASHID whose telephone number is (571)270-1578. The examiner can normally be reached Monday - Friday 7:30 - 17:00 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vikkram Bali can be reached on (571) 272-74155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David P. Rashid/
Examiner, Art Unit 2624

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